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FILED

APR 14 2011

CLERK *NO*
United States Bankruptcy Court
San Jose, California

7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**
9

12 In re:

13 MICHAEL R. BERUBE,

14 Debtor.

15 _____
16 MICHAEL R. BERUBE,

17 Plaintiff,

18 v.

19 US BANK, NATIONAL ASSOCIATION,
20 AS TRUSTEE FOR JPM ALT 2007-A2,

21 Defendants.
22 _____
23 _____

Case No.: 09-54715-ASW-11

Adversary No.: 11-05454 ASW

(Chapter 11)

JUDGE: Arthur S. Weissbrodt

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
ADVERSARY COMPLAINT**

Date: April 26, 2011

Time: 3:00 p.m.

Crtm: 3020

24 **PLAINTIFF OPPOSES DEFENDANT' MOTION TO DISMISS**

25 Comes now Debtor in Possession and Plaintiff Michael R. Berube (hereafter "Plaintiff"),
26 for claims against US Bank, National Association, as Trustee for JPM ALT 2007-A2 (hereafter
27 "Defendant"), to oppose Defendants' motion to dismiss adversary complaint as follows:
28 //

1 Plaintiff filed a complaint to determine the validity of lien pertaining to the real property
2 located at 122 Carmel Riviera Drive, Carmel, California.

3
4 Plaintiff detailed factual allegations in said complaint which provide the grounds of his
5 entitlement to the relief requested, notably that:

6
7 On January 19, 2007, Plaintiff executed two (2) Promissory Notes in favor of Lender
8 Alliance Bancorp.

9
10 On July 13, 2007, Alliance Bancorp filed for Chapter 7 bankruptcy in the US Bankruptcy
11 Court District of Delaware.

12
13 On October 25, 2007, a Notice of Default was recorded at the Office of the Recorder of
14 the County of Monterey as Document: 2007081596. Said Notice of Default is *not* valid as it
15 was not authorized by the Alliance Bancorp Chapter 7 bankruptcy Court as would be required
16 prior to "selling-out" any Alliance Bancorp interest in its junior lien 2nd Deed of Trust.

17
18 On December 28, 2007, and on December 31, 2007, Assignments of the subject Deed of
19 Trust were recorded at the Office of the Recorder of the County of Monterey as Document:
20 2007095756 and Document: 2007096186, respectively. Mortgage Registration Systems, Inc.
21 had *no* authorization from the Alliance Bancorp bankruptcy Court to transfer or otherwise divest
22 estate property without Court approval.

23
24 Defendants argue that the assignments and the Notice of Default are valid, yet a
25 Recission of Notice of Default was recorded at the Office of the Recorder of the County of
26 Monterey as **Document: 2010072338** (see attached).

1 Plaintiff never alleged that the subject Deed of Trust was ever reconveyed and the
2 Defendant is misleading this Court by suggesting otherwise.

3
4 It is clear that there is a substantial and ongoing controversy between the parties.
5

6 Plaintiff obtaining Defendants' responses to outstanding discovery requests is likely to
7 produce admissible evidence which will settle the controversy. In light of Defendants'
8 aggressive attempts (by and through its agents) to foreclose on Plaintiff's property, it is
9 reasonable that a cause of action for declaratory relief would serve the purpose of adjudicating
10 future rights and liabilities between the parties.
11

12 Plaintiff asserts that the assignments of the Note and Deed of Trust are not valid as they
13 were not authorized by the Alliance Bancorp bankruptcy Court. Plaintiff asserts that the Notice
14 of Default fails for the same reason. Because Mortgage Electronic Registration Systems, Inc.
15 lacked authority to make the post-petition Alliance Bancorp assignments of a Note or Deed of
16 Trust, any such assignments are not valid and remain a cloud on Plaintiff's title. As such, no
17 tender offer should be required. See Dimock v. Emerald Properties (2000) 81 Cal.App.4th 868,
18 876
19

20 Plaintiff declares under penalty of perjury under the laws of the State of California that
21 the foregoing is true and correct to the best of his knowledge this 12th day of March, 2011 in
22 Carmel, California.
23

24 It is therefore respectfully requested that the Court deny Defendants' motion to dismiss
25 adversary complaint, or in the alternative, grant Plaintiff leave to amend his complaint.
26

27
28 

Michael Berube, pro se

Document Details

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Document Number:	2010072338
Document Date:	12/08/2010
Pages:	1
Document Type:	131 - NOTICE RESCISSION OF DEFAULT
Reel/Page:	NA / NA
Parcel Number:	NA
Transfer Tax:	NA

Grantor Names	Grantee Names
FIRST AMERICAN TRUSTEE SERVICING SOLUTIONS LLC TRUSTEE	BERUBE MICHAEL R
FIRST AMERICAN TRUSTEE SERVICING SOLUTIONS TRUSTEE	
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC NOMINEE	
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS	
ALLIANCE BANCORP	

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CERTIFICATION OF SERVICE

I, Henry Li, the undersigned, am over the age of eighteen years and not a party to this action, certify the following:

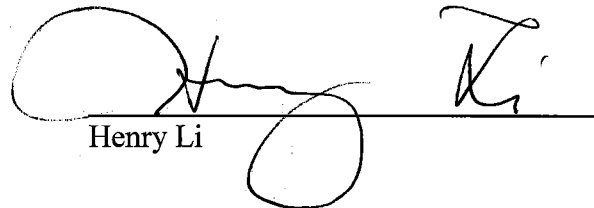
My business address is 123 E. San Carlos Street, San Jose, CA 95112,

That on April 12, 2011, I caused the **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ADVERSARY COMPLAINT** to be served by depositing true and correct copies of same in the US Mail postage prepaid first class to the following addresses:

ALVARADO SMITH
1 MacArthur Place, Suite 200
Santa Ana, CA 92707

US Trustee
280 S. First Street
San Jose, CA 95113

I certify the foregoing under penalty of perjury under the laws of the State of California this 12th day of April, 2011, in San Jose, California.


Henry Li